

THE HON'BLE SRI JUSTICE K.SARATH

WRIT PETITION No.19557 of 2019

ORDER:

This Writ petition is filed under Article 226 of Constitution of India seeking the following relief:

“....to issue a writ, order or direction, particularly one in the nature of writ of Mandamus to set aside G.O.Rt.No.09, Health, Medical and Family Welfare (VC-2) Department dated 07.01.2019 imposing on the petitioner the punishment of stoppage of three (3) annual grade increments with cumulative effect besides recovery of the alleged misappropriated amount and Memo No.8016/VC/2/2015-19 dated 16.07.2019 issued by the 1st respondent rejecting the appeal of the petitioner and also Memo No. 8016/VC/2/2015-19 dated 16.07.2019 rejecting the request of the petitioner to treat the period of suspension from 17.06.2016 to 16.10.2018 which was communicated to the petitioner on 31.08.2019 by declaring the punishment imposed as hash, shocking to conscience, punitive, arbitrary, illegal and violation of Articles 14, 16, 19 and 21 of Constitution of India and to treat the suspension of the period of the petitioner as ‘on duty.....”

2. Heard Sri M.Surender Rao, Learned Senior Counsel appearing for the petitioner and the Learned Government Pleader for Services-II appearing for the respondents.

3. The Learned Senior Counsel for the petitioner submits that the petitioner was initially appointed as Civil Assistant Surgeon and also promoted as Civil Assistant Surgeon in the year 2003. While so, the petitioner was placed under suspension through G.O.Rt.No.378, Health, Medical and Family Welfare (VC.2) Department dated 17.06.2016 making wild allegations against the petitioner. A Charge Memo was issued to the petitioner vide G.O.Rt.No.895 dated 02.11.2016 under Rule-20 of Telangana Civil Services (Classification, Control and Appeal) Rules, 1991. Thereafter, the Enquiry Officer was appointed vide G.O.R.No.246, MH & FW Department dated 17.03.2017 to conduct enquiry against the petitioner.

The Enquiry Officer concluded enquiry and submitted his report on 30.04.2018 giving finding that the charges leveled against the petitioner were not proved. Thereafter the 1st respondent issued Memo No.8016/VC-2/2015 dated 05.12.2018 disagreeing with the Enquiry Report and the directed the petitioner to submit her explanation within fifteen days from the date of receipt of the Memo. The petitioner submitted her explanation in detail on 20.12.2018. Thereafter the respondent No.1 issued the present impugned order imposing penalty of stoppage of three Annual Grade Increments with cumulative effects besides recovery of the misappropriation amount. The respondent No.1 clearly mentioned that under Rule 21 (2) of Telangana Civil Services (Classification, Control & Appeal) Rules, 1991 (Telangana Adoption) Order, 2016 (T.C.S CCA) calling for her explanation for disagreement factors with the findings of the Enquiry

Authority. It is stated in the impugned order that the explanation submitted by the petitioner to the disagreement factors is ambiguous, not specific and she has not brought out new facts to the notice of disciplinary authority and found that there are no merits in the explanation of the petitioner and decided to impose penalty of stoppage of three (3) annual grade increments with cumulative effect besides recovery of alleged misappropriated amount.

4. The Learned Counsel for the petitioner submits that as per Rule-21 (3) of T.C.S (CCA) Rules, 1991 the disciplinary authority shall consider the representation, if any, submitted by of the Government Servant and record its findings in the matter as specified in Sub-Rules (4) and (5) of Rule-21. The Enquiry Officer given clear finding about the alleged misappropriated amount was not proved and

requested to allow the writ petition by setting aside the impugned order.

5. The Learned Government Pleader for Services-III, basing on the counter, submits that the Enquiry Officer submitted report without substantial documentary and oral evidence held that the charges were not proved. The respondent No.1, who is the disciplinary authority, disagreed with the findings of Inquiry Authority and communicated the detailed disagreement factors to the petitioner under Rule 21 (2) of T.S. (CCA) Rules, 1991 and the petitioner has submitted her explanation to the disagreement factors. The petitioner has not brought out new facts to the notice of the disciplinary authority, therefore, the disciplinary authority found that there are no merits in the explanation submitted by the petitioner and decided to impose the penalty of stoppage of three annual agreed increments with cumulative effects

besides recovery of misappropriated amount against the petitioner

6. The Learned Government Pleader further submits that in exercise of the powers conferred under Sub-Rule (vi) of Rule 9 of TS CS (CCA) Rule, 1991 the disciplinary authority had imposed penalty of stoppage of three increments besides recovery of the misappropriated amounts treating the suspension period i.e. from 17.06.2016 to 16.10.2018 as 'not on duty' in terms of F.R.54-B (7).

7. The learned Government Pleader further submits that in the instant case penalty of stoppage of three (3) annual grade increments with cumulative effect was decided to impose vide G.O.Rt.No.9 (H,M and FW (VC2) Department dated 7.1.2019. As per F.R. 54-B (7) as the disciplinary concluded with punishment on the petitioner, treating the period of suspension of the

petitioner is treated as 'not on duty' and in view of the same, there are no merits in the petition and requested to dismiss the petition.

8. After hearing both sides and after and perusing the material filed along with the writ petition, counter and reply to the counter filed by the petitioner, this Court is of the considered view that admittedly in the instant case the Enquiry Officer found that all the charges against the petitioner were not proved, but the disciplinary authority, as per Rule-21 (2) of T.C.S (CCA) Rules, disagreed with the findings of the Enquiry Officer and issued notice to the petitioner calling for her explanation with the disagreement factors, but without giving specific findings issued the impugned orders stating that there are no merits in the explanation of the petitioner/charged officer and provisionally decided to impose the penalty. In fact Rule-21, (3) (4) and (5) of T.C.S (CCA) Rules, have to

be read together. If subsequently the disciplinary authority wants to proceed further in the matter, it has to record its finding before proceeding further. In the instant case the respondents decided to impose penalty of stoppage of three annual grade increments increments with cumulative effect besides recovery of misappropriated. As per Rule 21 (3) of T.C.S (CCA) Rules, the disciplinary authority shall consider the representation submitted by the petitioner and records its findings before proceeding further in the matter. But in the instant case the respondent No.1 has not recorded any findings before imposing penalty of stoppage of three annual grade increments. In view of the same, this Court is of the considered view that the impugned Order is contrary to Rule-21 (3) of T.C.S (CCA) Rules, 1991 and the same is liable to be set aside.

9. Accordingly, the writ petition is disposed of by remanding the matter to the respondent No.1 by setting aside the impugned order viz., G.O.Rt.No.09, Health, Medical & Family Welfare (VC-2) Department dated 07.01.2019 and directed to follow the procedure as contemplated under Rule-21 (3) of T.C.S (CCA) Rules, 1991 before imposing penalty.

10. Accordingly, this writ petition is disposed of with the above direction. There shall be no order as to costs.

11. Miscellaneous Petitions pending, if any, shall stand closed.

JUSTICE K.SARATH,

Date: 08.02.2023
trr